IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11635 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIRAM VISHRAM GADHVI

Versus

STATE OF GUJARAT THRO' S N DAVE

Appearance:

1. Special Civil Application No. 11635 of 2004

MR BY MANKAD for Petitioner No. 1

MS DS PANDIT, Ld. AGP for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 28/10/2004

ORAL JUDGEMENT

1. Rule. Ms.Pandit, learned AGP waives service of

rule on behalf of respondent No.1. Mr.Munshaw, learned Counsel waives service of rule on behalf of respondents No.2 and 3. With the consent of the parties the matter is taken up for final hearing today.

2. The only aspect which requires consideration is whether the Jt. Secretary of the State Government was right in rejecting the revision application on the ground that he has no jurisdiction to entertain the revision against the order passed by the District Development Officer (DDO) under Section 249(4) of the Gujarat Panchayat Act, 1993 (hereinafter referred to as the "Act")

3. The short facts of the case are that the petitioner is the President of Executive Committee of Mundra Taluka Panchayat. The resolutions were passed by General Body of Taluka Panchayat on 12.12.2003, which included for the authorisation of power for converting the land into non-agricultural purpose to the executive committee of Taluka Panchayat. It appears that thereafter on 5.2.2004 another meeting of General Body of Taluka Panchayat was scheduled for considering the proceedings of the earlier meeting and one of the items in the agenda was primary approval of the budget. In the meeting dated 5.2.2004 vide Resolution No.59 it was resolved by the General Body not to grant approval and set aside the proceedings of the earlier meeting dated 12.12.2003 and vide Resolution No.65 it was resolved to withdraw the powers from the Executive Committee and to assign the said powers to the General Body of the Taluka Panchayat. It appears that he Taluka Development Officer (TDO), respondent No.3 herein submitted a report to the DDO under Section 249 and thereafter the DDO has passed the order dated 23.3.2004, whereby he found that the proceedings of the resolution dated 5.2.2004 vide resolution No.59 is illegal and, therefore, he suspended the said resolution. However, for resolution No.65 it is found by him that as per the government resolution dated 26.7.1978 the powers for converting the land for non-agricultural purpose are assigned to Taluka Panchayat and, therefore, there is no reason to interfere with the resolution No.65 and, therefore, the said resolution was not suspended.

4. It appears that the petitioner preferred revision before the State Government under Section 259 of the Act against the decision of the DDO of not suspending the resolution No.65 dated 5.2.2004 of the General Body of Taluka Panchayat. The said revision was initially entertained and interim stay was also granted by the

State Government as per order dated 28.7.2004. Thereafter, on 31.8.2004 the State Government through its Jt. Secretary, Panchayat Department, has passed the order, whereby the revision is dismissed without examining the merits and it has been further observed that the petitioner has to prefer appeal under Section 249 of the Act before the Development Commissioner and it is under this circumstances the petitioner has approached this Court by preferring this petition.

5. Heard Mr.Mankad, learned Counsel for the petitioner, Ms.D.S.Pandit, learned AGP for the State Government and Mr.Munshaw, learned Counsel for respondents No.2 and 3.

6. Upon hearing the learned Counsel for the parties, it appears that on factual aspects there is no dispute and the matter only arises for the interpretation and scope and ambit of the power of the State Government under Section 259 of the Act and also the scope and ambit of the power of the Competent Authority under Section 249 of the Act. Section 259 of the Act reads as under:

> "259. State Government may call for proceedings.- The State Government may call for and examine the record of proceeding of any panchayat or of any committee thereof, or of any officer for the purpose of satisfying itself as to the legality or propriety of any order passed and may revise or modify the order as it shall deem just."

7. On the plain reading of the said Section, it is apparent that the powers under Section 259 of the State Government are revisional powers to call for and examine the proceedings of any panchayat or any committee or any officer for the purpose of satisfying itself as to illegality or propriety of any order passed by the concerned panchayat or the officers, as the case may be.

Section 249 of the Act, which provides for suspension of the execution of the order, reads as under:

> "249 (1) If, in the opinion of the Taluka Development Officer the execution of any order or resolution of a panchayat subordinate to the taluka panchayat or the doing of anything which is about to be done, or is being done by or on behalf of such panchayat, is unlawful, he may be order in writing suspend, the execution or

prohibit the doing thereof.

(2) When the Taluka Development Officer makes an order under subsection (1), he shall forthwith send to the panchayat affected thereby a copy of the order, with a statement of the reasons therefor.

(3) The Taluka Development Officer shall forthwith submit to the District Development Officer a report of every case occuring under this section and the District Development Officer may revise or modify any order made therein and make in respect thereof any other order which the Taluka Development Officer could have made.

(4) The District Development Officer in respect of a taluka panchayat or a village panchayat shall have the same powers as taluka development officer has in respect of a village panchayat under subsections (1), (2) and (3) subject to the modification that he shall submit a report under subsection (3) to the State Govt, the State Govt may pass such order thereon as it may deem fit.

(5) An officer authorised by the State Govt in this behalf by a general or special order, shall in respect of a district panchayat have the same powers as the District Development Officer has in respect of a taluka panchayat under this section."

8. It appears that Sub-section (1) of Section 249 provides for enabling power to TDO to suspend any resolution of gram panchayat. Sub-section (2) of Section 249 requires the reasons to be communicated to the panchayat which is affected by the order of TDO. Sub-section (3) of Section 249 provides that TDO shall submit report to DDO and the DDO may revise or modify the order made in respect of any order which could have been passed by TDO. Sub-section (4) of Section 249 provides that the DDO in respect of a Taluka Panchayat or a Village Panchayat shall have the same powers as TDO has in respect of a Village Panchayat under Sun-sections (1), (2), and (3), subject to the modification that he may submit a report under sub-section (3) to the State Government and the State Government may pass such order thereon as it may deem fit. Sub-section (5) of Section 249 provides that an officer authorised by the State

Government in this behalf shall in respect of a District Panchayat will have the same powers as the DDO has in respect of Taluka Panchayat under this Section. Therefore, so far as the power of the Officer under Sub-section (5) of Section 249 is concerned, he has the same power as DDO can exercise in respect of Taluka Panchayat. Therefore, the language used under Sub-section (5) is at par with the power which is assigned to the DDO in respect of Taluka Panchayat. Therefore, on cogent reading of the aforesaid Sub-sections (2), (3), (4) and (5), it appears that if it is the matter where the resolution is passed by the Gram Panchayat the power would be with the TDO and if it is the matter where the resolution is passed by the Taluka Panchayat, the power would be with the DDO and if it is the matter where the resolution is passed by the District Panchayat, the power shall be with the Officer authorised by the State Government. So far as Sub-section(4) is concerned it refers to the submission of the report and upon the report of the officer assigned with the power of the State Government may exercise the power. Therefore, it is not a matter where the powers were invoked by the petitioner against any of the resolutions of District Panchayat, but it was a matter for ventilating grievance against the order passed by the DDO.

9. Ms.Pandit and Mr.Munshaw for the State and for the DDO respectively placed reliance upon the notification of the Government dated 26.7.1994 issued in exercise of power under Section 271 of the Act delegating the powers to the authorties specified in the said notification. Entry No.28 of the said Notification reads as under:

Sr. No.	Sec. of Pan. Act	Guj. Act,93.	Nature of the powers	To whom the powers delegated
1	2	3	4	
28.	249(4) and 249(5)		Suspension of execution of an order	Development Commissioner in respect of taluka and District Panchayat.

10. Even if the heading of Column No.4 is considered the powers are delegated to the Development Commissioner in respect of Taluka and District Panchayats and it does

not refer to the DDO. Further, it is not a matter where the Development Commissioner or the State Government is called upon to exercise the power upon the report by any of its officer. If any person has any grievance against any resolution or proceedings or order of any Panchayat or any Committee or any Officer, then he can invoke the jurisdiction under Section 259 of the Act for which the State Government has revisional jurisdiction.

11. Therefore, it appears that the Officer who exercised the power on behalf of the State Government under Section 259 is not right in observing that there is no jurisdiction with the State Government or with him to hear the revision in view of the notification dated 26.7.1994, for which the powers are delegated to the Development Commissioner. As such in view of the aforesaid observation, it appears that the State Government or the Officer of the State Government who is assigned with the power under Section 259 of the Act has jurisdiction to hear the revision under Section 259 of the Act against any order passed by the DDO under Section 249 of the Act, whereby the resolution is suspended or ought to have been suspended or any grievance is raised in respect to illegality or propriety of the order passed by the DDO.

12. In view of the above, the order dated 31.8.2004 passed by the State Government, produced at Annexure "G", is quashed and set aside with the further directions that the revision shall stand restored to the file of the State Government and the State Government shall re-hear the parties and shall decide the revision on merits in accordance with law and shall render the decision as early as possible, preferably within a period of one month from the receipt of the writ of this Court.

13. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances there shall be no order as to costs. Direct service is permitted.

28-10-2004 (Jayant Patel, J.)
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